



March 26, 2008

Ms. Carol Monahan-Cummings
Chief Counsel
Office of Environmental Health Hazard Assessment
California Environmental Protection Agency
P.O. Box 4010
Sacramento, CA 95812

RE: Proposition 65 Warnings for Food Products

Dear Ms. Monahan-Cummings:

The California League of Food Processors (CLFP) is a statewide trade association that represents food processing firms with operations in California. CLFP members produce a wide array of products that are sold to consumers across the U.S. and exported to other countries. CLFP appreciates the opportunity to provide comments to OEHHA with respect to Proposition 65 warning requirements for food products. This is an important and timely issue for the food processing industry, retailers, and consumers.

CLFP strongly supports a petition recently submitted by Swanson Health Products, Inc. to the U.S. Food and Drug Administration (FDA) requesting that FDA prevent California's Safe Drinking Water and Toxic Enforcement Act (Proposition 65) from being applied to foods and dietary supplements. CLFP agrees with Swanson that Proposition 65 directly conflicts with the Federal Food, Drug, and Cosmetic Act of 1986 and the Food and Drug Administration's implementing regulations. FDA should have over-arching authority over consumer food safety and food labeling to ensure that consistent science-based public health standards are applied across the country.

In addition to the concerns raised in the Swanson petition to FDA, CLFP opposes any requirement for Proposition 65 warnings on food products for several reasons, including:

- Proposition 65 creates an incentive for private enforcers to bring actions against, and extort settlement from, companies who cannot afford the cost of mounting an active defense against often frivolous labeling claims. This is an entirely inappropriate means for regulating the safety of food products.
- To avoid costly litigation some products may bear warning statements if there is any detectable level of a listed chemical, even if the amount poses no real threat to human health.
- Proposition 65 can create undue confusion among consumers. Foods that meet or exceed all federal safety and quality standards may bear warning labels that

essentially state that the product is not safe to consume. CLFP contends that this is not in the best interest of advancing public health and consumer education. Consumers purchase food products in stores with the solid assurance that the items satisfy FDA standards and can be consumed without restriction or fear of serious health affects. This level of confidence is critical to producers and consumers should not be undermined by Proposition 65.

- Most food products containing Proposition 65 listed chemicals are consumed in relatively small amounts on an annual or lifetime, basis. As a result, exposure potential from any one product is usually quite minimal. CLFP contends that in many cases it is merely conjecture that an actual threat to human health is posed by the limited lifetime consumption of products containing minute amounts of chemicals that, under extreme laboratory conditions specifically designed to induce a response, may have caused some detectable carcinogenic or reproductive affects.
- Requirements to print Proposition 65 warning statements on food products are generally not practical. Many types of food products and packages are not well suited to accommodate lengthy warning labels. Producers are already required to print information on packages regarding product contents, serving size, weight/count, nutrition and calorie content, company address, bar codes, and other information (e.g. package recycling symbol). In many cases the package is simply not large enough to also accommodate detailed information for the consumer regarding Proposition 65.
- Product labeling also poses a significant problem for firms that market their products in other states or nations. In many cases it is not practical to pack and label products just for the California market because it would add to production costs and the producer would have to worry that the California product could be re-sold by brokers to buyers located in other states. Proposition 65 warnings on products sold outside California will confuse consumers in other states or countries who are not aware of California regulations and might not be able to readily access information about the meaning of the warnings and the actual level of risk involved with consuming the products.

In summary, CLFP opposes requiring Proposition 65 warnings on food products because it conflicts with Federal authority, encourages frivolous litigation, is impractical to implement, and causes undue confusion and concern among consumers. CLFP urges OEHHA to focus its efforts on the larger issue of the *necessity* for product labeling rather than the mechanics of how to label products.

Sincerely



Rob Neenan
Director of Regulatory Affairs

CC: Fran Kammerer, OEHHA